

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Paul Baron	Team: Team # 4	CCRB Case #: 200918409	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 11/30/2009 6:40 PM	Location of Incident: 185th Street and St. Nicholas Avenue	Precinct: 34	18 Mo. SOL 5/30/2011	EO SOL 5/30/2011	
Date/Time CV Reported Mon, 11/30/2009 9:23 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 11/30/2009 9:23 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christopher Derco	14560	946917	MN IRT
2. POM Christopher Reilly	17570	947387	MN IRT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christopher Derco	Abuse: PO Christopher Derco stopped § 87(2)(b)	
B.POM Christopher Derco	Discourtesy: PO Christopher Derco spoke obscenely to § 87(2)(b)	
C.POM Christopher Derco	Abuse: PO Christopher Derco frisked § 87(2)(b)	
D.POM Christopher Derco	Discourtesy: PO Christopher Derco acted rudely toward § 87(2)(b)	
E.POM Christopher Derco	Abuse: PO Christopher Derco searched § 87(2)(b)	
F.POM Christopher Reilly	Abuse: PO Christopher Reilly searched § 87(2)(b)	

Case Summary

§ 87(2)(b) filed a complaint on the CCRB call processing system on November 30, 2009 (**enc. 5**). § 87(2)(b) reported that on November 30, 2009, at approximately 6:40 PM, he was walking northbound on St. Nicholas Avenue, near 185th Street, in Manhattan, when he interacted with PO Christopher Derco and PO Christopher Reilly, both assigned to Manhattan North IRT. The following allegations resulted from the officers' actions:

- **Allegation A- Abuse of Authority:** PO Christopher Derco stopped § 87(2)(b) § 87(2)(b), § 87(2)(g).
- **Allegation B- Discourtesy:** PO Christopher Derco spoke obscenely to § 87(2)(b) § 87(2)(g).
- **Allegation C- Abuse of Authority:** PO Christopher Derco frisked § 87(2)(b) § 87(2)(b), § 87(2)(g).
- **Allegation D- Discourtesy:** PO Christopher Derco acted rudely toward § 87(2)(b)
- **Allegation E- Abuse of Authority:** PO Christopher Derco searched § 87(2)(b)
- **Allegation F- Abuse of Authority:** PO Christopher Reilly searched § 87(2)(b) § 87(2)(g).

§ 87(2)(b) was offered mediation on December 8, 2009. § 87(2)(b) rejected mediation; § 87(2)(b)

Results of Investigation

Civilian Statement(s)

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) -year-old Hispanic male, black hair, brown eyes, 5'8", 152 pounds; § 87(2)(b) § 87(2)(b).

§ 87(2)(b) was interviewed at the CCRB on December 8, 2009 (**enc. 6**). He reported that on November 30, 2009, at approximately 6:40 PM, he was walking northbound on St. Nicholas Avenue while listening to music on in-ear headphones. At 185th Street, § 87(2)(b) while looking down, noticed that someone was coming in his direction and so he walked to the right of the sidewalk to try and avoid contact with the oncoming individual. § 87(2)(b) and the individual bumped shoulders and § 87(2)(b) continued walking without turning around. Within ten seconds, § 87(2)(b) felt an arm on his shoulder and heard someone yell "get your arms up against the wall." § 87(2)(b) did not hear any commands before his shoulder was grabbed. § 87(2)(b) could not identify any witnesses. § 87(2)(b) turned around and realized that he had bumped into a police officer. PO Derco stated "don't you know I'm a fucking cop, you don't bump into fucking cops." § 87(2)(b) took off his headphones and told PO Derco that he had been looking down and did not realize he bumped into an officer. PO Derco questioned § 87(2)(b) where he was going and § 87(2)(b) stated he was coming from the gym. PO Derco placed § 87(2)(b) chest first against the wall and patted down the outside of § 87(2)(b)'s clothes. PO Derco turned § 87(2)(b) around to face him and told him to put down his back pack. When § 87(2)(b) asked if he could hold on to it,

because the ground was wet, PO Derco grabbed the backpack and threw it on the ground. PO Derco unzipped and searched inside all four of the pockets of § 87(2)(b)'s leather jacket, and his jeans pockets. PO Derco took § 87(2)(b)'s wallet from his jeans and took § 87(2)(b)'s ID from his wallet. PO Derco told PO Reilly to search through § 87(2)(b)'s backpack. PO Reilly unzipped and placed his hands inside the bag, but did not remove any contents. At some point during the incident, PO Derco called § 87(2)(b) "stupid." § 87(2)(b) observed PO Derco write him a summons § 87(2)(b).

Attempts to Contact Civilians

- On December 9, 2009, Inv. Baron conducted fieldwork at stores on the side of the street where § 87(2)(b) was stopped (**enc. 4, 12**). 1488, 1490 and 1494 St. Nicholas Street did not have functioning video cameras and no one in the stores observed the incident. 1492 St. Nicholas Street (Yuan-Yuan Liquor) had a video camera and the footage was reviewed, but it did not capture the incident. None of the employees observed the incident.

NYPD Statement(s):

Subject Officer: PO CHRISTOPHER DERCO

- § 87(2)(b)-year-old, white male, 5'7", 165 pounds, brown hair, brown eyes
- 4:00 pm on November 30, 2009 to 12:35 AM on November 31, 2009, Manhattan North IRT-Foot post 6 and 7 with PO Reilly, in uniform

Stop and Frisk Report/Summons #§ 87(2)(b)

§ 87(2)(b) was stopped at the intersection of St. Nicholas Avenue and West 185th Street (**enc. 10**). PO Derco placed § 87(2)(b) against a wall and frisked him. The stop was preceded by § 87(2)(b) making furtive movements and having a bulge in his waistband; this was also the basis for the frisk. Crime suspected was criminal possession of a weapon. § 87(2)(b) changed direction at the sight of the officers and gave evasive, false, or inconsistent answers to officers' questions. § 87(2)(b) was "aggressive," but he was not searched. PO Derco issued him a summons for § 87(2)(b).

CCRB Statement

PO Derco was interviewed at the CCRB on February 2, 2010 (**enc. 7**). On November 30, 2009 at approximately 6:52 PM, PO Derco was walking southbound on St. Nicholas Avenue with PO Reilly. PO Derco observed § 87(2)(b) walking towards him. § 87(2)(b) had room to get around PO Derco. PO Derco made eye contact with § 87(2)(b) who veered towards him. PO Derco thought that § 87(2)(b) might be trying to speak with him and thus did not get out of his way. § 87(2)(b) bumped his shoulder into PO Derco's shoulder as he passed by. § 87(2)(b) looked at PO Derco after he passed him and PO Derco told him to stop, but § 87(2)(b) did not respond and continued walking. PO Derco stopped § 87(2)(b) by placing his arms on his shoulders from behind, to find out why he had bumped into him. PO Derco did not initially intend to write § 87(2)(b) a summons. § 87(2)(b) turned around towards PO Derco and pushed PO Derco's arms off of him. PO Derco repeatedly told § 87(2)(b) to step to the side and § 87(2)(b) refused, loudly asking why he had to. PO Derco asked § 87(2)(b) for his identification about three times; § 87(2)(b) stated he did not have his ID before eventually providing it. PO Derco also asked § 87(2)(b) to remove his hands from his pockets multiple times before he complied. § 87(2)(b) reached around his waistband after removing his hands; § 87(2)(b) was wearing a jacket and PO Derco could not tell if he was reaching for an object. PO Derco did not remember if there was a bulge in § 87(2)(b)'s waistband. PO Derco placed § 87(2)(b) chest first against a wall and frisked him. PO Derco

did not recall if he searched § 87(2)(b) PO Derco did not recall cursing or speaking discourteously to § 87(2)(b) during the incident. PO Derco did not recall if § 87(2)(b) had a backpack or if one was searched at the location. PO Derco eventually issued § 87(2)(b) a summons for his violent and aggressive behavior that occurred throughout the incident.

Subject Officer: PO CHRISTOPHER REILLY

- § 87(2)(b) -year-old, white male, 5’7”, 160 pounds, brown hair, hazel eyes
- 5:30 pm on November 30, 2009 to 2:05 AM on November 31, 2009, Manhattan North IRT-Foot Post with PO Derco, in uniform

PO Reilly was interviewed at the CCRB on February 9, 2010 (enc. 8). PO Reilly confirmed that § 87(2)(b) made eye contact with the officers prior to bumping in to PO Derco and that PO Derco called out to § 87(2)(b) several times before he stopped. PO Reilly added that § 87(2)(b) stopped walking on his own and PO Derco did not use force to stop him. PO Derco repeatedly asked § 87(2)(b) for his identification; § 87(2)(b) was initially non-compliant and gave PO Derco an attitude throughout the incident, but eventually he provided the information. § 87(2)(b) also threw his hands up in the air during the incident. PO Reilly did not recall anyone cursing. PO Derco frisked § 87(2)(b) for weapons, because of the initial bump into PO Derco, because § 87(2)(b) did not initially stop and because he was resistant in providing his ID. PO Reilly did not recall a bulge on § 87(2)(b)'s waistband. He did not recall PO Derco searching § 87(2)(b) or taking § 87(2)(b)'s wallet out of his pocket. PO Reilly did not recall observing § 87(2)(b) with a backpack and did not recall PO Derco throwing a bag to the ground. He did not recall anyone searching a backpack at the location.

Summons/Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of February 9, 2010 with regard to the incident (enc. 13).

Civilian(s) Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian(s) CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (enc. 3).

Subject Officer(s) CCRB History

- PO Derco has been a member of the service for one year and there are no substantiated CCRB allegations against him. PO Reilly has been a member of the service for one year and there are no substantiated CCRB allegations against him (enc. 2).

Conclusion

Identification of Subject Officer(s)

- PO Derco confirmed stopping and frisking § 87(2)(b) and PO Reilly confirmed being present during the incident.

Investigative Findings and Recommendations

Allegation A- Abuse of Authority: PO Christopher Derco stopped § 87(2)(b)

In order to question and stop a civilian, officers need founded suspicion and reasonable suspicion of criminality, respectively (**encl. 1b**). It is undisputed that § 87(2)(b) bumped shoulders with PO Derco while walking on St. Nicholas Avenue and that § 87(2)(b) continued walking several feet before PO Derco grabbed on to § 87(2)(b)'s shoulder to question him. PO Derco and PO Reilly both testified that § 87(2)(b) made eye contact with the officers prior to bumping into PO Derco and thus believed that § 87(2)(b) intentionally bumped into PO Derco and ignored PO Derco's requests for § 87(2)(b) to stop. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that he did not hear the officers' request him to stop because he had on headphones, § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Upon placing his hand on § 87(2)(b) PO Derco alleged that § 87(2)(b) pushed his arm away, refused to step to the side and refused to provide his ID. He also refused to remove his hands from his pockets and reached at his waistband. § 87(2)(g)

§ 87(2)(b) alleged that he only told PO Derco that he was coming from the gym, at which point he was placed against the wall. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation B- Discourtesy: PO Christopher Derco spoke obscenely to § 87(2)(b)

§ 87(2)(b) alleged that PO Derco stated "don't you know I'm a fucking cop, you don't bump into fucking cops," and also called him "stupid." PO Derco did not recall making these statements and PO Reilly did not recall hearing anyone curse during the incident. § 87(2)(g)

Allegation C- Abuse of Authority: PO Christopher Derco frisked § 87(2)(b)

PO Derco based his frisk on § 87(2)(b) changing directions at the sight of an officer, making furtive movements, and moving his arms near his waistband after having been repeatedly told to take his hands out of his pockets. § 87(2)(b) also gave evasive answers to officers' questions, initially refusing to provide his identification and refusing to step aside as the officers questioned him. § 87(2)(b) was described as "aggressive" and both officers stated that he flailed his arms during the incident. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) admitted that he refused some of the officers' instructions, such as the command to put down his bag. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) Kamins, New York Search and Seizure, p. 2-98, indicates that if a suspect reaches towards an indefinable bulge on his waistband, and there has been an indication of menacing behavior, a frisk will be permitted (**enc. 1c**). It is also noted that if an officer reasonably suspects that he is in danger of physical injury, he may frisk an individual for a weapon, Kamins, 2-74,75 (**enc. 1d-e**). § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation D- Discourtesy: PO Christopher Derco acted rudely toward § 87(2)(b)

§ 87(2)(b) alleged that PO Derco told him to put down his back pack. § 87(2)(b) asked if he could hold on to it, because the ground was wet, and PO Derco grabbed the backpack and threw it on the ground. PO Derco did not recall if § 87(2)(b) had a backpack or if he threw a backpack on the ground at the incident location. PO Reilly did not recall if § 87(2)(b) had a backpack with him. § 87(2)(g)

Allegation E- Abuse of Authority: PO Christopher Derco searched § 87(2)(b)

Allegation F- Abuse of Authority: PO Christopher Reilly searched § 87(2)(b).

§ 87(2)(b) alleged that PO Derco searched the pockets of his leather jacket and jeans. PO Derco removed § 87(2)(b)'s wallet and ID. § 87(2)(b) alleged that PO Reilly searched inside of his backpack. PO Derco did not recall if he searched § 87(2)(b) and stated that § 87(2)(b) provided his ID to the officers. PO Reilly did not recall if PO Derco searched § 87(2)(b) and did not know how § 87(2)(b) provided his information to the officers. Neither officer recalled if § 87(2)(b) had a backpack or if a bag was searched at the location. The stop and frisk report indicated that no search was conducted and made no mention of a bag. § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date